

IN THE SENATE

SENATE BILL NO. 1151

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO PAYDAY LOANS; AMENDING SECTION 28-46-402, IDAHO CODE, TO PROVIDE THAT A PAYDAY LOAN MADE IN THIS STATE IN VIOLATION OF THE LICENSING REQUIREMENT OF THE DEPARTMENT OF FINANCE IS VOID, UNCOLLECTIBLE AND UNENFORCEABLE, TO PROVIDE THAT FOR ANY SUCH PAYDAY LOAN THE DEBTOR IS NOT OBLIGATED TO PAY THE PRINCIPAL OR ANY FEE ASSOCIATED WITH SUCH PAYDAY LOAN, TO PROVIDE PROCEDURES, AND TO PROVIDE FOR CEASE AND DESIST ACTIONS BY THE DIRECTOR OF THE DEPARTMENT OF FINANCE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 28-46-402, Idaho Code, be, and the same is hereby amended to read as follows:

28-46-402. LICENSE REQUIRED. (1) No person shall engage in the business of payday loans, offer or make a payday loan, or arrange a payday loan for a third party lender in a payday loan transaction without having first obtained a license under this chapter. A separate license shall be required for each location from which such business is conducted.

(2) Any "supervised financial organization," as defined in section 28-41-301(45), Idaho Code, or any person organized, chartered, or holding an authorization certificate under the laws of another state to engage in making loans and receiving deposits, including a savings, share, certificate, or deposit account and who is subject to supervision by an official or agency of the other state, shall be exempt from the licensing requirements of this section.

(3) A payday loan made in this state in violation of the licensing requirement of this section is void, uncollectible and unenforceable. For any such payday loan the debtor is not obligated to pay the principal or any fee associated with such payday loan. If a debtor has paid any part of the principal or fee, the debtor has a right to recover the payment from the person violating the provisions of this section or from an assignee of that person's rights who undertakes direct collection of payments or enforcement of rights arising from the debt. In the event the administrator initiates an administrative or civil action against a person who has violated the provisions of this section, the administrator shall be entitled to recover the principal and fees received by such person in a payday loan transaction made in violation of the provisions of this section.

(4) If the administrator finds that a person subject to this part has violated, is violating, or that there is reasonable cause to believe that a person is about to violate the provisions of this part, or any rule promulgated under this act and pertinent to this part, the administrator may, in his discretion, order the person to cease and desist from the violations.